

REPORTS ANALYSIS DIVISION REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: February 26, 2014

ANALYST: Tyler Culberson

I. COMMITTEE: Flemming for Congress
C00507780
Martha Flemming, Treasurer
7619 Chambers Creek Road West
University Place, WA 98467

II. RELEVANT STATUTES: 2 U.S.C. 441a(a) and (f)
11 CFR § 100.82
11 CFR § 100.83
11 CFR § 103.3(b)
11 CFR § 110.1(b), (e), (g)

III. BACKGROUND:

Excessive, Prohibited and Other Impermissible Contributions or Transfers: Failure to Refund Excessive Contributions within Permissible Timeframe

Flemming for Congress ("the Committee") received excessive loans totaling \$146,400.00 for the 2012 Primary Election from Spanky, LLC, a limited liability company,¹ that were not refunded within the permissible timeframe (Attachments 2 and 3).

On April 15, 2012, the Committee filed the 2012 April Quarterly Report covering the period from January 1, 2012 to March 31, 2012. The report disclosed a \$100,700.00 loan from Spanky, LLC on Schedule A supporting Line 13(b) (Loans Made or Guaranteed by Source Other Than Candidate) (Image 12951451985) and Schedule C

¹ Spanky, LLC is treated as a partnership for tax purposes. The violation amount in this referral is calculated based on the contribution limit for a partnership (\$2,500.00 per election) (Attachment 3).

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supporting Line 10 (Debts and Obligations Owed By the Committee) of the Detailed Summary Page (Image 12951452004, Attachment 2). The loan was designated for the 2012 Primary Election.

On July 16, 2012, the Committee filed the 2012 July Quarterly Report covering the period from April 1, 2012 to June 30, 2012. The report disclosed a \$100,000.00 loan from Spanky, LLC on Schedule A supporting Line 13(b) (Image 12952497561) and Schedule C supporting Line 10 of the Detailed Summary Page (Image 12952497566). The loan was designated for the 2012 Primary Election.

On July 26, 2012, the Committee filed the 2012 12 Day Pre-Primary Report covering the period from July 1, 2012 to July 18, 2012. The report disclosed a \$150,000.00 loan repayment to Spanky, LLC on Schedule B supporting Line 19(b) (Loan Payments for Loans Made or Guaranteed by Source Other than the Candidate) (Image 12971834673, Attachment 2). The payment was also reflected on Schedule C supporting Line 10 of the Detailed Summary Page (Image 12971834677).²

On September 19, 2012, a Request for Additional Information (RAI) referencing the 2012 April Quarterly Report was sent to the Committee. Among other items, the RAI notified the Committee that the March 6, 2012 loan from Spanky, LLC appeared to constitute an excessive contribution, and asked if the LLC was treated as a corporation or as a partnership for tax purposes (Image 12330012862).

That same day, an RAI referencing the 2012 July Quarterly Report was sent to the Committee. The RAI notified the Committee that the June 28, 2012 loan from Spanky, LLC appeared to constitute a contribution, and asked if the LLC was treated as a corporation or as a partnership for tax purposes (Image 12330012867).

On October 24, 2012, the Committee filed a Miscellaneous Electronic Submission ("Form 99"), stating, in full:

"Per your inquiry regarding the Loan made to the Flemming for Congress Campaign from Spanky LLC, we respectfully submit that the campaign was told Spanky LLC is treated for tax purposes as a partnership and not a corporation. Spanky LLC was formed for the purpose of funding various projects, including but not limited to political campaigns.

The loan to Flemming for Congress was not the first loan nor is it the only or last loan from this group.

We hope this clarifies the status of the company and its loan to Flemming for Congress. Payment of the balance of the loan is due December 31, 2012" (Image 12940423621).

² The Committee incorrectly disclosed the \$150,000.00 payment as applicable in full to the \$100,700.00 loan incurred on March 6, 2012, which resulted in a negative outstanding balance of \$49,300.00 for that loan on Schedule C (Loans) (Image 12971834677).

Also on October 24, 2012, the Committee filed an Amended 2012 July Quarterly Report. The report contained memo text for each of the two loans from Spanky, LLC, which stated, in part:

"Spanky LLC is treated for tax purposes as a partnership and not a corporation. This company was created to fund various projects, including but not limited to political campaigns. Loans to Flemming for Congress were not the first loans by this company nor the last" (Image 12940425294).

On March 19, 2013, the Reports Analysis Division (RAD) Analyst called Martha Flemming, Committee Treasurer, to inform her that the Committee will be referred for further Commission action if the excessive contributions were not refunded. The Analyst left a voicemail message for Ms. Flemming requesting that she respond to his message as soon as possible to discuss the referable issues (Attachment 4).

On March 26, 2013, the RAD Analyst left a voicemail message for Ms. Flemming restating the referable issues that needed to be addressed and encouraged the Committee to return his call (Attachment 4).

On August 7, 2013, RFAs referencing the 2012 April Quarterly Report and 2012 Amended July Quarterly Report, received October 24, 2012, were sent to the Committee. The RFAs stated, in part:

"Your report discloses a loan obtained from Spanky LLC. To the extent this loan was obtained from a lending entity pursuant to 11 CFR §100.83, you must disclose the terms, including the due date and interest rate, between the candidate and the lender on Schedule C-1. ... Please amend your report to include a Schedule C-1 or provide clarifying information if this loan was not obtained pursuant to 11 CFR §100.83" (Images 13330035649 and 13330035651).

On October 21, 2013, Stanley L. K. Flemming, Candidate, contacted the RAD Analyst. The Candidate stated he wanted to terminate the Committee. The Analyst informed the Candidate that apparently impermissible loans from Spanky, LLC disclosed on the Committee reports were referable for further Commission action. The Candidate indicated he was unaware of RAD's RFAs and phone calls to the Committee regarding this matter. The Analyst explained to the Candidate how to view the RFAs on the FEC website and how to file a termination report, emphasizing that the Committee cannot be terminated until the referable issue is resolved (Attachment 4).

On October 22, 2013, the Candidate left a voicemail message for the RAD Analyst, stating that he was able to access the RFAs related to the LLC loans and that he would submit clarifying documentation. He also asked about how to report candidate

loans. On October 23, 2013, the RAD Analyst returned the Candidate's call and provided the requested information (Attachment 4).

On November 5, 2013, the Candidate contacted the RAD Analyst to request the fax number in order to send in a response concerning the LLC loans. He indicated he would also mail the filings to the Commission (Attachment 4).

Later that same day, the Committee faxed a copy of the 2013 Termination Report, covering the 2013 October Quarterly reporting period from July 1, 2013 through September 30, 2013, to the RAD Analyst. Schedule A of the report disclosed a \$60,000.00 receipt from the Candidate (Image 13031140719).³ Schedule B supporting Line 19(b) of the Detailed Summary Page disclosed a \$60,000.00 loan repayment to "Loftus, David, on behalf of Spanky, LLC" (Image 13031140720, Attachment 2). The report included Schedule C (Loans), Schedule C-1 (Loans and Lines of Credit from Lending Institutions), and copies of the Loan Agreement and Promissory Note for the \$200,000.00 loan from Spanky, LLC.

On January 30, 2014 an RFAI was sent to the Committee informing them they would not be permitted to terminate until all outstanding issues were resolved (Image 14330042501-2).

On February 5, 2014 the Candidate called the RAD Analyst to notify the Analyst that the Committee was in receipt of the termination request denial letter from the FEC. Mr. Flemming stated that he was under the impression that the Committee was terminated once they filed the Termination Report. The Analyst reminded him that the Committee had been referred to another office for further action related to loans the Committee accepted from an LLC. The Analyst then reiterated that the Committee could not terminate until the Committee's open compliance matters were resolved. The Analyst reminded Mr. Flemming that the Committee needs to file their 2013 Year-End Report and continue filing any regular quarterly reports until the Commission has notified the Committee that they have been terminated. Mr. Flemming acknowledged this and stated the Committee would file their 2013 Year-End Report (Attachment 4).

To date, no further communications have been received from the Committee regarding this matter.

³ The report did not indicate which Detailed Summary Page line the Schedule A supported. The Detailed Summary Page disclosed a \$60,000.00 receipt on Line 11(d) (Contributions from the Candidate) (Image 13031140717). However, the Committee attached a Schedule C (Loans) characterizing the \$60,000.00 receipt as a candidate loan (Image 13031140724).

17-04747-1-008-10

O-Index (2013-2014)															
Cmte. ID: C00507780 Cmte. Name: FLEMMING FOR CONGRESS															
Treasurer Name: MARTHA FLEMMING Address: 7619 CHAMBERS CK RD W, UNIVERSITY PLACE, WA 98467															
Cmte. Type: H (HOUSE) Cmte. Designation: P (PRINCIPAL CAMPAIGN COMMITTEE OF A CANDIDATE) Filing Frequency: QUARTERLY FILER															
Form Tp	Rpt Tp	All	Recpt Dt	Pgs	Begin Img#	Beg Cvg Dt	End Cvg Dt	Ltr Mail Dt	Begin Cash	Recpts	Disb	End Cash	Debits	Loans	Debits & Loans
MS-T			11/5/2013	17	13031140867	7/1/2013	9/30/2013		-	-	-	-	-	-	-
RQ2	TER	N	1/30/2014	2	14330042501	7/1/2013	9/30/2013	1/30/2014	-	-	-	-	-	-	-
RQ7	Q3		11/1/2013	2	13330039872	7/1/2013	9/30/2013	11/1/2013	-	-	-	-	-	-	-
F3N	Q1	N	4/15/2013	11	13961646617	1/1/2013	3/31/2013		\$6,504	\$0	\$36	\$6,468	-	\$54,950	\$54,950
F3N	Q2	N	7/15/2013	13	13941147844	4/1/2013	6/30/2013		\$6,468	\$1,810	\$5,850	\$2,428	-	\$54,950	\$54,950
F3	TER	N	11/14/2013	19	13031140714	7/1/2013	9/30/2013		\$2,428	\$60,000	\$62,428	\$0	-	\$0	\$59,583
Totals									\$61,810	\$68,314					

O-Index (2011-2012)															
Cmte. ID: C00507780 Cmte. Name: FLEMMING FOR CONGRESS															
Treasurer Name: MARTHA FLEMMING Address: 7619 CHAMBERS CK RD W, UNIVERSITY PLACE, WA 98467															
Cmte. Type: H (HOUSE) Cmte. Designation: P (PRINCIPAL CAMPAIGN COMMITTEE OF A CANDIDATE) Filing Frequency: QUARTERLY FILER															
Form Tp	Rpt Tp	A/I	Recpt Dt	Pgs	BegIn Img#	Beg Cvg Dt	End Cvg Dt	Ltr Mail Dt	RegrIn Cash	Recpts	Disb	End Cash	Debits	Loans	Debits & Loans
MS-T			10/24/2012	1	12940423621				-	-	-	-	-	-	-
RQ2	Q1	N	8/7/2013	2	13330035649	1/1/2012	3/31/2012	8/7/2013		-	-	-	-	-	-
RQ2	Q1	N	9/19/2012	5	12330012862	1/1/2012	3/31/2012	9/19/2012		-	-	-	-	-	-
RQ2	Q2	A	8/7/2013	2	13330035651	4/1/2012	6/30/2012	8/7/2013		-	-	-	-	-	-
RQ2	Q2	N	9/19/2012	3	12330012867	4/1/2012	6/30/2012	9/19/2012		-	-	-	-	-	-
RQ2	Q2	N	9/19/2012	2	12330012870	7/1/2012	7/18/2012	9/19/2012		-	-	-	-	-	-
F3N	YE	N	1/31/2012	11	12970338334	12/1/2011	12/31/2011		\$0	\$4,750	\$3,764	\$986	-	\$4,250	\$4,250
F3N	Q1	N	4/15/2012	32	12951451975	1/1/2012	3/31/2012		\$986	\$120,301	\$14,052	\$107,235	\$12,000	\$104,950	\$104,950
F3N	Q2	N	7/16/2012	18	12952497551	4/1/2012	6/30/2012		\$107,235	\$118,765	\$1,140	\$224,860	\$12,000	\$204,950	\$204,950
F3A	Q2	A	10/24/2012	19	12940425283	4/1/2012	6/30/2012		\$107,235	\$118,765	\$1,140	\$224,860	-	\$204,950	\$204,950
F3N	12P	N	7/26/2012	19	12971834662	7/1/2012	7/18/2012		\$224,860	\$1,000	\$202,081	\$23,778	\$12,000	\$54,950	\$54,950
F3N	Q3	N	10/15/2012	14	12972684400	7/19/2012	9/30/2012		\$23,778	\$0	\$12,464	\$11,313	\$12,000	\$54,950	\$54,950
F3N	YE	N	1/31/2013	14	13960679496	10/1/2012	12/31/2012		\$11,313	\$0	\$4,809	\$6,504	-	\$54,950	\$54,950
F2		N	12/15/2011	2	11030694657				-	-	-	-	-	-	-
F1		N	12/15/2011	5	11030694679				-	-	-	-	-	-	-
Totals									\$244,816	\$238,312					

O-Index (2009-2010)															
Cmte. ID: C00507780 Cmte. Name: FLEMMING FOR CONGRESS															
Treasurer Name: MARTHA FLEMMING Address: 7619 CHAMBERS CK RD W, UNIVERSITY PLACE, WA 98467															
Cmte. Type: H (HOUSE) Cmte. Designation: P (PRINCIPAL CAMPAIGN COMMITTEE OF A CANDIDATE) Filing Frequency: QUARTERLY FILER															
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No records were found for this cycle.

Flemming for Congress (C00507780)**Loans from and Loan Repayments to Spanky, LLC****Loans from Spanky, LLC**

Date Incurred	Loan Amount	Report	Image Number(s) – Schedule C
3/6/12	\$100,700.00	2012 April Quarterly	12951452004
6/28/12	\$100,000.00	Amended 2012 July Quarterly	12940425300
Total	\$200,700.00		

Loans Repayments to Spanky, LLC

Date of Payment	Payment Amount	Report	Image Number(s) – Schedule B
7/5/12	\$150,000.00	2012 12 Day Pre-Primary	12971834673
8/30/13	\$60,000.00	2013 Termination	13031140720
Total	\$210,000.00¹		

¹ The total amount of loan repayments, \$210,000.00, exceeds the total amount of loans incurred, \$200,700.00. This discrepancy may be explained by the 8% interest rate the Committee disclosed for the loans (Image 13031140721).

Flemming for Congress (C00507780)

Excessive Contributions Not Refunded and/or Refunded Outside Permissible Timeframes, Listed by Report

2012 April Quarterly Report (1/1/12 – 3/31/12)

Name	Date	Contribution Amount	Election	Excessive Amount Received During Reporting Period & Not Refunded Within Timeframe	Refunded Outside of Timeframe	Refunded # of Days Since Receipt
Spanky, LLC	3/6/12	\$100,700.00	P2012	\$98,200.00 ¹	\$98,200.00	121

Amended 2012 July Quarterly Report (4/1/12 – 6/30/12), Received 10/24/12

Name	Date	Contribution Amount	Election	Excessive Amount Received During Reporting Period & Not Refunded Within Timeframe	Refunded Outside of Timeframe	Refunded # of Days Since Receipt
Spanky, LLC	6/28/12	\$100,000.00	P2012	\$48,200.00	\$48,200.00	428

¹ For the purpose of calculating the violation amount, \$2,500.00 of the 3/6/12 loan is within the partnership contribution limit, leaving an excessive amount of \$98,200.00. The Committee's 7/5/12 loan repayment of \$150,000.00 provided a late remedy for the \$98,200.00 excessive amount of the 3/6/12 loan and a timely remedy for \$51,800.00 of the 6/28/12 loan (leaving an excessive balance of \$48,200.00). The Committee's 8/30/13 loan repayment of \$60,000.00 provided a late remedy for the remaining \$48,200.00 of the 6/28/12 loan.